

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**JAMES ARTHUR ROSS,**

Plaintiff,

vs.

**MARK NOOTH, et al.,**

Defendants.

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03:09-cv-01530-HU

OPINION AND  
ORDER

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James Arthur Ross  
State ID No. 12599830  
Eastern Oregon Correctional Institute  
2500 Westgate  
Pendleton, OR 97801

Plaintiff Pro Se

John R. Kroger  
Attorney General  
Michael R. Washington  
Senior Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
Telephone: (503) 947-4700  
Facsimile: (503) 947-4791  
Email: Michael.R.Washington@doj.state.or.us

Attorneys for Defendants

1 HUBEL, J.,

2 Pursuant to Federal Rule of Civil Procedure ("Rule") 26(b)(1),  
3 Defendants move the court for an order to stay discovery pending  
4 this court's resolution of Defendants' concurrently filed motion  
5 for summary judgment.

6 Plaintiff James Arthur Ross ("Plaintiff"), an inmate at the  
7 Snake River Correctional Institution in Ontario, Oregon, sent a  
8 letter to Defendants' counsel on April 23, 2012, requesting  
9 discovery in this case. In his letter, which was received by  
10 Defendants' counsel on April 25, 2012, Plaintiff requested that  
11 Defendants provide him with: (1) "a list of all available beds on  
12 Snake River's complex one's privileged [sic] housing on the day of  
13 October 30<sup>th</sup> and 31<sup>st</sup>, 2008"; (2) "a list of all available beds that  
14 were on Snake River's privileged [sic] housing units in general  
15 population, comple[x] 2 unit J and complex 3 unit J"; (3) "a list  
16 of all available beds located on Snake River's complex 2's general  
17 population"; and (4) "copies of all investigative reports and audio  
18 recordings that were a part of and a result of the hearings for my  
19 placement in segregation that was performed by hearings officer  
20 Honsley at Snake River . . . [which] includes reports by Lt. Horton  
21 and Sgt. Bennet." (Washington Decl. Ex. 1.)

22 Defendants' arguments regarding Plaintiff's discovery requests  
23 are as follows. First, Defendants argue that the discovery  
24 Plaintiff requests exceeds the scope of discovery under Rule  
25 26(b)(2). Second, Defendants contend that Plaintiff filed his  
26 amended complaint on March 12, 2010, and therefore had ample  
27 opportunity to obtain the information he seeks. Lastly, Defendants  
28 argue that resolution of their motion for summary judgment should

1 precede discovery because they are qualifiedly immune from suit.  
2 See *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (recognizing  
3 qualified immunity is "an entitled not to stand trial or face the  
4 other burdens of litigation.")

5 It is well settled that district courts have wide latitude in  
6 controlling discovery. *U.S. Fidelity & Guar. Co. v. Lee Invs. LLC*,  
7 641 F.3d 1126, 1136 n.10 (9th Cir. 2011) (citation omitted). That  
8 said, and without expressing any opinion as to the merits of  
9 Defendants' motion for summary judgment, it seems to me that  
10 Plaintiff's discovery requests are potentially relevant and it  
11 would not be overly burdensome to require Defendants to produce  
12 such information. Accordingly, Defendants' motion to stay  
13 discovery is DENIED. See *Rhodes v. Robinson*, 408 F.3d 559, 569  
14 (9th Cir. 2005) (reiterating the fact that "the prohibition against  
15 retaliatory punishment is 'clearly established law' in the Ninth  
16 Circuit, for qualified immunity purposes"); *Miller v. Van Boening*,  
17 No. C10-5712, 2011 WL 884222, at \*5 (W.D. Wash. Feb. 11, 2011)  
18 (declining to stay discovery because the claim implicated clearly  
19 established law); *Jones v. Neven*, 399 Fed. Appx. 203, 204-05 (9th  
20 Cir. 2010) (indicating that the district court denied a pro se  
21 inmate's motion to stay resolution of summary judgment pending an  
22 opportunity for discovery, which, in turn, meant he had no  
23 meaningful opportunity to oppose summary judgment).

#### 24 **CONCLUSION**

25 For the reasons set forth below, Defendants' motion (Docket.  
26 No. 87) to stay discovery is DENIED. To facilitate Plaintiff's  
27 response to Defendants' motion for summary judgment, Defendants  
28 must produce the requested material within twenty-one (21) days

1 from entry of this order and file an affidavit with this Court  
2 attesting to date of delivery of the discovery into Plaintiff's  
3 possession. Plaintiff's response to Defendants' motion for summary  
4 judgment must be filed within forty-five (45) days of his receipt  
5 of discovery. Any reply brief must be filed within the time limits  
6 specified in the Local Rules for the District of Oregon.

7 IT IS SO ORDERED.

8 Dated this 1st day of June, 2012.

9 /s/ Dennis J. Hubel

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11 Dennis James Hubel  
12 Unites States Magistrate Judge  
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